Corhart Refractories Company *and* United Steelworkers of America, AFL-CIO. Case 9-CA-17871

15 September 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 9 February 1983 Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge, except as noted below, and to adopt his recommended Order, as modified herein.

AMENDED CONCLUSIONS OF LAW

Substitute the following Conclusion of Law 3 for that of the Administrative Law Judge:

"3. By unlawfully discharging and refusing to reinstate David West and Stewart Knoerr, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Corhart Refractories Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Discharging employees because of their participation in protected concerted activities including an economic strike."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT discharge employees because of their participation in protected concerted activity including an economic strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer to David West and Stewart Knoerr immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of pay they may have suffered, with interest.

WE WILL expunge from our files any reference to the discharges of David West and Stewart Knoerr, and notify them in writing that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against them.

CORHART REFRACTORIES COMPANY

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The charge herein was filed by United Steelworkers of America, AFL-CIO, herein called Union or Charging Party, on January 15, 1982. A complaint thereon was issued on February 19, 1982, alleging that Corhart Refractories Company, herein called Employer or Respondent, violated Section 8(a)(1) and (3) of the Act in discharging economic strikers Stewart Knoerr and David West. An answer thereto was timely filed by Respondent. Pursuant to notice a hearing was held before me at Louisville, Kentucky, on October 19, 1982. Briefs, which have been duly considered, have been timely filed by Respondent and the General Counsel.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In finding that Respondent violated Sec. 8(a)(1) and (3) by discharging economic strikers Knoerr and West, the Administrative Law Judge relied on *General Telephone Co.*, 251 NLRB 737 (1980), and concluded that Respondent did not have a good-faith belief that they had engaged in misconduct. We agree that the discharges violated Sec. 8(a)(1) but we find it unnecessary to decide whether Respondent also violated Sec. 8(a)(3). Furthermore, we do not rely on the Administrative Law Judge's application of *General Telephone Co.* to the facts of this case. Rather, we find that the General Counsel proved that Knoerr and West did not engage in misconduct and, therefore, by discharging them, Respondent violated Sec. 8(a)(1). *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).

In adopting the Administrative Law Judge's findings concerning the purported strike settlement agreement, Member Hunter relies solely on the credited evidence in the record that no such agreement existed.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

The Employer is engaged in the manufacture of refractories material with an office and place of business located in Louisville, Kentucky. During the past 12 months the Employer purchased and received at its Louisville, Kentucky, facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Kentucky. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the United Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*[1]

1. Background

The Union, in furtherance of a labor dispute over the negotiation of a new contract, struck Respondent on February 14, 1981,[2] and established picket lines at Respondent's facility on July 22. The Union offered to return to work on July 27. Thus the strike ended and the employees returned to work, except for a number of striking employees, including West and Knoerr, who had been discharged for picket line misconduct during the strike and so denied reinstatement.

2. Discharge of Stewart Knoerr

On March 5, Knoerr was sent a letter signed by Donald L. Heid, personnel supervisor, which read:

> On March 3, 1981, at approximately 8:45 P.M. you were observed kicking the glass door panels on the Lee Street entrance to this company.
>
> As you know, this is in violation of the court ordered restraining order. In addition, these acts are placing your continued employment with this company is serious question.
>
> While this one incident will not cause your discharge this time, any future incidents most certainly will.

Apart from this letter which is obviously hearsay with respect to the truth of the allegations made in it,[3] Respondent offered no probative evidence to show that Knoerr had kicked any glass door panels. Heid was not called as a witness, nor were any other individuals who may have been able to testify about the incident.

On the other hand, Knoerr denies ever having broken any glass door and further testified as to the glass door panels referred to in the March 5 letter that he had noticed them broken as early as February 16 when the strike started. This testimony is corroborated by another picketing employee, Billy Lawrence, and I credit this testimony.

In these circumstances, it is my conclusion that this record will not support Respondent's contention that Knoerr kicked at or in any glass door panel.

The second incident involving Knoerr occurred during the early morning hours of March 21 while he was picketing with another employee, Charles Kaufman, at Respondent's driveway. At that time, two guards[4] were cleaning up the driveway; one with magnet type collector. As he was collecting, according to Knoerr, and while Knoerr was walking away, he was struck in the foot by the a magnet. Knoerr turned around and the guard ran, hitting a wall, and knocking off his hat. At this time another guard behind Knoerr hit him in the back with a broom and then sprayed him in the face with mace so that he could not see, whereupon both guards went up a ramp to a location behind a fence. Kaufman's account of the incident substantially corroborates the above version offered by Knoerr in that one guard hit Knoerr in the foot and as Knoerr turned to him he ran, hitting a wall, and the other hit Knoerr in the back with a broom and sprayed him in the face with mace. Another picket, Kenneth Reid, testified that he observed the incident from a sidewalk across the street and saw one guard hit Knoerr in the foot whereupon Knoerr turned around and the other guard hit him with the broom and sprayed mace in his eyes.

Roy Vogel, one of the guards, testified that he and Ivan Tischendorff, another guard, were cleaning the driveway area, he with a broom and Tischendorff with a magnet, when Knoerr grabbed the magnet and tried to prevent Tischendorff from using it. Vogel further testified that he was sweeping with the broom and that as he was finishing, he was slapped on the side of the face by a man later identified to him as Knoerr. Then, as he and Tischendorff were backing up to the gate, Knoerr followed them threatening to "stomp" them. Vogel states that he did attempt to mace Knoerr but that the mace was defective and just "trickled down the end of the can."[5] Once inside the gate, according to Vogel, Knoerr

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[1] There is conflicting testimony regarding the allegations of the complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness, and between the testimony of each and that of other witnesses with similar or apparent interests. In evaluating the testimony of each witness, I rely specifically on his or her demeanor, and make my findings accordingly. And while apart from considerations of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered them. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

[2] All dates refer to 1981 unless otherwise indicated.

[3] The letter was admitted without objection through Respondent's plant manager, Walter Reibling, who characterized the misconduct described in the letter as "kicking in" a glass door panel.

[4] Respondent hired guards provided by Precision Security Company during the strike.

[5] This testimony is inconsistent with a statement submitted by Vogel to Respondent wherein he states, "He then began approaching me and I immediately took out my mace and tried to disable him which had no effect on him, as the man was intoxicated."

began using profanity to the guards and spit through the fence twice on guard sergeant named James Brown.[6] Knoerr denied hitting or spitting on any of the guards.

On March 26, Heid sent Knoerr a letter reading:

> On March 24, 1981, you struck a security guard on the head. On the same night you spit in another security guard's face. You also took the hard hat belonging to the guard.
>
> For these actions you will be discharged at the conclusion of the strike.

It is undisputed that criminal charges were filed in connection with this matter and at a subsequent jury trial Knoerr was found not guilty.

Having carefully evaluated the record, and consistent with the criteria set out above, I am satisfied that Knoerr's account is the more accurate, particularly in view of the corrboration by Lawrence and Reid and the obvious lack of corroboration for Vogel's version, since neither Tischendorff nor Brown testified.

3. The paintshed firebombing incident of June 10

During the strike, television was employed as a plant surveillance security technique and television surveillance was maintained from a guardshack. There was however one area, including the paintshed, which was a "blind spot" in the television surveillance and was monitored visually. The paintshed is some 125 yards from the guardshack where the television is located.

Ronnie Lee Cravens, one of the security guards at the guardshack, testified that on the morning of June 10, about 2 a.m., he observed through his binoculars a group of pickets, including West and Knoerr, in the vicinity of the paintshed. Cravens further testified that he saw West and Knoerr light "something that seemed to be a cigarette" and that West threw the object on to the roof of the paintshed where it burst into a "big ball of fire." According to Cravens, enough light was provided from street lights to enable him to make identifications of West and Knoerr.

At the time of the incident there were three guards with Cravens in the guardshack, Mike Roebuck, Steve Bowman, and David Bowker; however, only Cravens observed the incident through binoculars.[7] Bowman, who was the sergeant of the guard for that shift, testified that he observed, without the benefit of binoculars, West and Knoerr light what appeared to be a cigarette, and saw West throw it atop the paintshed starting a fire. According to Bowman, he was able to make a positive identification of West and Knoerr despite the fact that he was some 125 yards away from the incident, and despite the fact that it was a cloudy night, having rained earlier, because sufficient illumination was provided by the street light and security lights that shone towards the paintshed. Bowman also testified that he had seen West and Knoerr at the plant premises some hours earlier in the evening prior to the incident.

Roebuck corroborated that he saw Knoerr and a man later identified to him as West light an object which West then threw onto the roof of the paintshed where it burst into flame. Roebuck testified that he immediately ran to extinguish the fire, which he succeeded in doing very quickly, with minimal scorching damage to the roof.

Bowman testified that he called the fire and police departments, told them that West and Knoerr were responsible, and gave them statements to that effect later. Knoerr was arrested that same day when he returned to the picket line shortly after 2 a.m., and West was arrested about 10 a.m. on June 10 at his home.

It appears that both Knoerr and West were indicted for arson but after a jury trial in the Jefferson Circuit Court both were found not guilty on December 17, 1981.

Both West and Knoerr testified that they were not at the picket line at the time of the incident. West testified that he was not at the picket line at any time on June 9 or 10. He testified that he was scheduled for picket line duty from 8 to 12 p.m. on June 9, but that since he wanted to be off on June 9, he traded that shift with Lonnie Walters, who corroborates West, stating that he normally picketed 4 hours per day from 4 to 8 p.m., 2 days per week or a total of 8 hours per week. By arrangement between themselves, West picketed for 8 hours, that is his shift as well as Walters, from 4 p.m. to midnight on June 8, while Walters picketed his shift as well as West's on June 9, also from 4 p.m. to midnight. Walters and picket line captain Williams Watkins, who was at the picket line on June 9 from 6 p.m. to 12 a.m., testified that West was not there on the evening of June 9. Lawrence, also a picket line captain with responsibility for the midnight to 6 a.m. shift, testified that he did not see West at all that night.

West testified that he spent the evening from about 6 to 11:30 p.m. at the house of his neighbor, Robert Reno, helping him to remodel a bathroom. Thereafter, he returned to his own house, took a shower, ate something, and was about to go to bed when another neighbor, Jim Mahoney, arrived at or about 12 or 12:30 a.m. looking for his son who was a friend of West's son. West testified that he went to sleep and was awakened about 2:30 a.m. by Kenny Beard, a union negotiating committee member, who told him that the police were going to arrest him. Beard called him again later and gave him the telephone number of an attorney. As noted above, West was arrested about 10 a.m. on June 10. West's wife June and his neighbor Reno testified and corroborated West's testimony as to his whereabouts on the night of June 9 and 10.

West was subsequently discharged by letter from Heid reading:

> On June 10, 1981, you were observed and positively identified as the person throwing a fire bomb at the paint shed located in the south end of our parking lot.
>
> For these actions you are discharged effective at the end of the strike.

Knoerr, like West, denies having been at the picket line at the time of the incident. Knoerr testified that he

[6] Neither Tischendorff nor Brown testified.

[7] According to Cravens, both West and Knoerr had previously been identified to him by Henry Stinnet, a guard employed by Respondent. Stinnet did not testify.

was performing his scheduled picket line duties that evening from 8 p.m. to midnight, but that he left somewhat early on the evening of June 9, in the company of Beard and Kaufman. They went in Beard's car. According to Knoerr they repaired to a place of business called Murphy's Bar where they remained until shortly before it closed at 2 a.m. Knoerr testified that they returned to the picket line in order for him to get his pickup truck, which was parked near the paintshed, and for Kaufman to get his car.

When they arrived at the picket line shortly after 2 a.m., the police and fire departments were on the scene and Knoerr was arrested. Knoerr's alibi as to his whereabouts was substantially corroborated by the testimony of his companions, Beard and Kaufman.

Obviously a credibility resolution is necessary to determine whether West and Knoerr were responsible for the paintshed fire. A review of this entire record, utilizing the credibility criteria set out above, convinces me that neither West nor Knoerr was at the picket line at the time of the incident and therefore could not have been responsible. In reaching this conclusion I note specifically the wealth of testimony corroborating their accounts, and the difficulty that I have in crediting the positive identifications made by the guards, particularly that of Bowman who testified that his identification was made with the naked eye. I find it doubtful that such a positive identification could be made, particularly in the darkness of a cloudy night at a distance of 125 yards, with or without binoculars and illumination. Also, as to the identifications, it should be borne in mind that the security guards had not come to learn the picket's identities themselves, by reason of any substantial personal contact, but relied solely on what they were told by others as to the identity of the pickets. The possibility of inaccurate identification is real in such circumstances. Accordingly, having credited West and Knoerr I conclude that neither was at the picket line at the time of the paintshed fire incident and could not have been responsible for it.

B. *Discussion and Analysis*

Board and court precedent make it clear that Section 7 of the Act gives to employees the right to participate in legitimate strike activity and that disciplining employees for having engaged in such a protected activity violates Section 8(a)(1) of the Act. However, it is also well settled that employees who engage in serious picket line misconduct may forfeit this right and an employer does not violate the Act by discharging or denying reinstatement to strikers who have engaged in such egregious misconduct.

An employer may also take the position, as a defense to a striker's normal right to reinstatement, that the strikers were denied reinstatement because of the employer's "honest belief" that the employees were guilty of serious picket line misconduct. Once the employer has shown such a "honest belief," the burden shifts to the General Counsel to come forward with evidence either that the employee did not engage in the misconduct or that the conduct was protected whereupon the burden shifts back to the employer to rebut such evidence. *General Telephone Co.*, 251 NLRB 737 (1980).

Now we must apply these criteria to the facts of the instant case. As to West, it is undisputed that he was discharged for conduct which occurred during the course of the strike, i.e., the firebomb incident. The General Counsel established a *prima facie* case by showing that West was discharged for conduct occurring during an economic strike. Now did Respondent show that it had an "honest belief" that West had engaged in serious picket line misconduct? I am satisfied that the record in the instant case will support Respondent's contention of an honest belief that West was a participant in a serious act of misconduct in tossing the incindiary device on the paintshop roof, having acted on the reports of hired security company guards stationed at the plant. Having thus shown an honest belief that West had engaged in this misconduct, the burden of showing either that the misconduct did not occur or that it was protected activity fell upon the General Counsel. In this connection, the General Counsel introduced evidence to show that West was not at the picket line at the time of the firebomb incident. As noted earlier, the record supports the General Counsel's position, and it follows that the General Counsel has sustained its burden of showing that West was not guilty of the misconduct assigned to him by Respondent and also that Respondent has failed to make any rebuttal case. Accordingly, I conclude that West was an economic striker wrongfully discharged in violation of Section 8(a)(1) and (3) of the Act.

Turning now to Knoerr's discharge, Respondent takes the position that Knoerr was discharged because of his misconduct on March 21 in connection with an altercation with hired security guards; that being preceded by an earlier misconduct in kicking in a glass door on March 3.

As noted above, when an employer seeks to justify its refusal to reinstate an economic striker it must show that it had an "honest belief" that the striker engaged in such misconduct. As to the March 3 incident, the record fails to make such a showing. The only suggestion of honest belief is Heid's letter of March 5 asserting that Knoerr was observed on March 3, 1981, kicking glass door panels. This letter is obviously a hearsay document as to the actual occurrence. Heid did not testify, nor did any of the alleged observers to the incident, nor did Reibling, except in general terms about how the information was acquired which formed the basis for the warning letter. In other words, while Respondent asserts that it had the requisite "honest belief" of serious misconduct, this record contains no factual basis on which I can conclude its existence, and the simple assertion by Respondent that it entertains such an honest belief will not suffice, *General Telephone Co., supra* at 739.

However, even assuming for the purpose of this case that Respondent has shown an honest belief, Knoerr denied it. He testified, along with Lawrence, that the glass panels were broken when the strike started, well before March 3, and Respondent has failed to sustain its burden to rebut this credited testimony. Accordingly, I am persuaded that this record will not support any finding of misconduct by Knoerr in connection with the glass door panel kicking allegation.

With respect to the security guards incident on March 21, which Respondent assigns as the basic misconduct leading to Knoerr's discharge, it appears that Reibling acted upon reports made to him by security guards who were at the scene. Respondent's understanding of Knoerr's misconduct was predicated upon their reports and constitute a legitimate basis for the formulation of Respondent's honest belief. That having been done, it became the burden of the General Counsel to introduce evidence that Knoerr had not engaged in the misconduct alleged. As noted earlier, I have concluded, by crediting Knoerr, that the General Counsel has discharged that burden. Thereupon, it became Respondent's burden to rebut that evidence. Implicit in my crediting Knoerr's corroborated account of the incident, over Respondent's version, is the conclusion that such rebuttal case has not been made out by Respondent, and I so find.

Moreover Knoerr's aggressive reaction, while perhaps avoidable, does not constitute such serious or egregious misconduct so as to forfeit his right to reinstatement. The credited and corroborated version of the incident discloses that Knoerr was initially provoked by Tischendorff who ran a magnet into his foot and upon being confronted by Knoerr sprayed mace in his face. The credited testimony does not support a finding that Knoerr struck Vogel.

Respondent takes the position that Knoerr was discharged for the March 21 guard incident, and thus was already discharged at the time of the June 10 firebomb incident. However, Respondent also appears to take the position that it had a right to deny reinstatement to Knoerr based on the June 10 incident, and accordingly the matter warrants consideration herein.

As noted above, I have concluded that the evidence does not support the conclusion that Knoerr was at the scene of the accident at the time that it occurred, having credited corroborated testimony that he did not arrive until after the incident. Since I have credited this testimony concerning his whereabouts when the misconduct occurred, I also conclude that Respondent has failed to rebut the General Counsel's evidence showing that Knoerr did not engage in the misconduct alleged by Respondent.

In summary, I conclude that the record herein discloses no misconduct by West whatever and nothing so serious in the scuffle between Knoerr and the guards as to justify Respondent's action in discharging them. Further, I find that Respondent thereby violated Section 8(a)(1) and (3) of the Act.

2. The alleged settlement agreement

It appears that during the course of negotiations in settlement of strike the parties discussed, *inter alia*, the reinstatement of West and Knoerr. Edgar Zingman, company attorney, and Riebling testified that, at a meeting between union and management on July 21, the Company took the position that it was unwilling to reinstate Knoerr and West, but that it was willing, as a facesaving device, to go to the third-step company answer level of the grievance procedure of the expired contract, but that the company answer would be final, and that it was unequivocally opposed to any arbitration of their discharges. Robert Ringmam, staff representative of the Union, testified that at this meeting he was aware of the Company's firm position that it was unwilling to reinstate West and Knoerr, and concedes that Respondent may have stated that it would not agree to arbitrate those discharges. However Ringman denies having agreed to accept Respondent's third-step answer as final and binding on it and did not agree not to seek arbitration.

A careful review of the testimony, including the notes of the meeting made by Zingman, convinces me that while Respondent took the positions that it was unwilling to reinstate West and Knoerr; that the third-step company answer thereto, presumably negative, would be final; and that it would not agree to arbitrate, the record does not support the conclusion that the Union agreed to accept Respondent's position as a basis for settlement. Accordingly, I conclude that there was no settlement reached between the Union and Respondent which would preclude disposition of the unfair labor practice issue raised by the complaint herein.

Moreover, even if the Union had agreed to accept as final and binding the third-step employer answer, in view of the predictably negative employer response to reinstatement at the third step, such action by the Union would have been tantamount to a waiver by the Union of an employee's reinstatement right which is guaranteed in Section 7 of the Act and the Board has held that employee reinstatement rights may not be waived by the collective-bargaining representative, even when such a waiver produces a desirable result such as ending a strike. *Hotel Inn De Isla Verde*, 265 NLRB 1513, fn. 3 (1982).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent discharged David West and Stewart Knoerr for reasons which offended the provisions of Section 8(a)(1) and (3) of the Act. I shall therefore recommend that Respondent make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided herein with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[8]

[8] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By unlawfully discharging and refusing to reinstate David West and Stewart Knoerr, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act I hereby issue the following recommended:

ORDER[9]

The Respondent, Corhart Refractories Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employees for engaging in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action in which I find necessary to effectuate the policies of the Act:

(a) Offer to David West and Stewart Knoerr immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered in the manner set forth in the section entitled "The Remedy."

(b) Expunge from its files any references to the discharges of David West and Stewart Knoerr and notify them in writing that this has been done and that evidences of these unlawful discharges will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due herein.

(d) Post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[9] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."